

15.06.00.00 - AIRSPACE LEASES - PROCESSING

15.06.01.00 Rental Agreement

The potential lessee must submit a letter to Airspace stating the proposed use, the proposed rate, and the rental period (not to exceed six months).

After DARC determines the appropriateness of the use and the lease rate is established, Airspace executes the standard rental agreement and opens an account in RWPS. HQ A/S and FHWA review, approval, and concurrence are not needed, and no copies need to be submitted to HQ A/S.

The tenant may be granted one six-month extension, for a total occupancy of one year, if no other parties have indicated an interest and if Airspace does not have plans to market the site for a higher use. If others are interested in the site, the competitive bid process must be initiated immediately.

15.06.02.00 Short-Term Leases - Competitive Bid

Many sites in the inventory are not suitable for development or have not yet attained their highest and best use. In some cases, parking or open storage may be the highest and best use. These sites can generate substantial revenue if leased for uses with shorter terms, such as parking and open storage.

Short-term uses are for two to five years and are most commonly used for parking lots with private lessees. When a site is offered for bid, Airspace should attempt to contact all interested or potentially interested parties. Marketing efforts may include media advertising, signing of the property, personal contact with owners and tenants of abutting properties, and mailing notices to all parties on the inquiry list.

15.06.02.01 Bid Auction

A bid auction shall be held at least three months prior to expiration of any existing lease. The normal process is to hold an oral auction unless Airspace anticipates more interest and a higher rate of return by asking for sealed bids. The bid package should identify proposed use, term, conditions, minimum bid, proposed occupancy date, insurance requirements, and selection process (e.g., highest bid). It should also require a minimum deposit to

participate in the bid and provisions for payment to secure the site. A copy of the standard lease agreement should be attached or made available to all interested parties. See Exhibit 15-EX-02 for a sample bid package and Exhibit 15-EX-03 for sample bid instructions. HQ A/S review and approval of a short-term bid package is not required.

15.06.02.02 Minimum Bids

The minimum bid for a short-term use is established by the following.

- **Site Has Never Been Bid Or Leased** – minimum bid is based on market data the Appraisal Branch establishes.
- **Site Has Been Previously Bid** – new minimum bid is based on the last minimum bid adjusted for current market conditions, but not less than 75% of the previous minimum bid.
- **Site Has Been Previously Leased** – new minimum bid is based on the most recent FMLR adjusted for current market conditions and annual adjustments (e.g., CPI percentage).

HQ A/S must approve reducing the minimum bid below 75% of the bid valuation, the previous minimum bid, or the previous lease rate if Airspace can substantiate the need to attract more interest in the bidding process.

The maximum return to the state should be obtained considering the reduction in costs to maintain a vacant site.

15.06.02.03 Bid Deposit and Payment

Each interested party in the competitive bid process must bring a cashier's check equal to three months of the minimum bid (Bid Deposit) to be allowed to participate in the auction. After completion of the bid or auction, Airspace shall immediately contact the successful bidder and request an **immediate** payment of the balance due, calculated by multiplying the successful bid by two months, adding the security deposit, and then subtracting the Bid Deposit. All other Bid Deposits are returned to the originators. The successful bidder, now the proposed lessee, must

execute the standard lease agreement within 30 days of the bid, or Airspace will contact the second successful bidder in the process. Funds are not returned to the proposed lessee if the agreement is not executed.

15.06.02.04 **Renewals**

When the current lessee is the successful bidder in a competitive bid to lease the same property, a Lease Renewal (Form RW 15-4) may be used identifying any new provisions in the terms and conditions for continued use, as well as the new rental rate. Extensive changes to the previous agreement would require a new lease agreement.

A renewal is different from an extension to an existing long-term lease agreement.

15.06.03.00 **Long-Term Leases - Competitive Bid**

Long-term bid leases are not commonly used and are rarely used for development. The process is generally the same for both non-development and development leases. Since there will be at least minimal construction (e.g., fences, landscaping, and paving) in most non-developmental leases, the requirements for plans may still apply. The plans should also show circuitry of traffic on the site and the ingress and egress routes.

Refer to Table 1, "Process - Long Term Bid Lease," on the following page.

15.06.03.01 **Offer and Proposal**

An airspace site that will be developed with a longer-term lease agreement requires a different method of selecting the successful bidder. While shorter-term parking or non-development leases are awarded based on the highest bid (lease rate), the preferred method for longer-term development leases is to evaluate the offers and proposals received from developers.

The bid package should specify exactly how the successful bidder will be selected, requiring an Offer and Proposal (O&P) from prospective bidders. The O&P describes in detail the type of development proposed (e.g., amusement park, office building, and major recycling center) and the proposed lease rate over a period of years (e.g., graduated payments and percentage of revenues). The airspace site should be awarded to the

developer that proposes the best and highest return to the Department.

Selection of the successful bidder should involve evaluating the best development and use of the site, as well as the quality and certainty of the investment return ("income") to the Department. The construction of an amusement park may be less intensive than an office building, but the Department may have little use for the amusement park after the lease has expired. A major recycling center may generate a higher return in the earlier years of the lease but not generate the highest return over the entire term of the lease. Also, there may be more risks associated with a major recycling center because of contaminants. An office building, however, may require a longer option period before all approvals to construct are obtained.

HQ A/S will work closely with Airspace in determining the best method to lease a site for development and, if a competitive bid is selected because of considerable interest in the site, provide assistance in developing the bid package for O&Ps.

15.06.04.00 **Long-Term Leases - Directly Negotiated**

The CTC must approve directly negotiated leases for a long-term agreement (more than 5 years), with some exceptions. Direct negotiations are often approved when an airspace site's potential revenue is increased if the site is "joined" with an adjacent site (whether privately or governmentally owned). Processing a directly negotiated lease is generally the same for development and non-development leases. In most non-development leases, there will be at least minimal construction (such as fences, landscaping, and paving), so the requirements for plans may still apply.

TABLE 1 PROCESS - LONG-TERM BID LEASE		
Step	Responsible Party	Action
1	Airspace	Identify site to be leased, either by an inquiry or as part of the marketing plan.
2		If not in inventory, request maps from R/W Engineering.
3		Submit to DARC indicating proposed use. Include Permits and SFM as appropriate.
4	DARC	Review and approve/disapprove request.
5	Airspace	If DARC does not approve, determine the problem and try to resolve any difficulty with the proposal. If the problem cannot be resolved and a short-term use cannot be identified, remove the proposal from the marketing plan and the inventory.
6		If DARC approves the request, ensure all program restrictions and conditions are included in the bid package and the lease agreement (e.g., access limitations, column protection, and landscaping).
7		Send DARC comments and a site map to HQ A/S for FHWA conceptual approval.
8		Request bid lease valuation if not already scheduled.
9		Send proposed marketing plan and bid package to HQ A/S for review and approval as appropriate. If the bid package suggests an option period, the proposed Option Agreement should be developed and included in the package. If not, the standard agreement should be included.
10		Sign site, place media ads, and contact neighboring owners/tenants.
11		Mail bid package to interested parties; conduct a site review as needed.
12		Open Offer and Proposal bids. Analyze all bids received and send recommendation of the successful bidder to HQ A/S. HQ A/S will reconfirm FHWA's approval if the proposal differs slightly from the approved use.
13	Lessee	Execute the standard option or lease agreement. Any modifications or changes require prior HQ A/S approval.
14		An Option Agreement requires payment when executed by Optionee.
15		The proposed use must have final approval before the lease can be executed. (See Final Approval - 15.06.11.03.)
16	Airspace	Submit Agreement to HQ Program Manager or delegated representative.
17	HQ A/S Delegated Rep	Sign Option and/or Agreement and return to Airspace, as appropriate.*
18	Lessee	After final reviews/approvals are obtained, apply for an encroachment permit to construct.
19	Airspace	Monitor lessee's move onto the site, including any construction, and begin property management activities.

*Note - required for development purposes only.

AAC concurrence is not needed to directly negotiate with a public agency or an owner adjoining a landlocked site. The terms and conditions for a directly negotiated landlocked site require CTC approval.

Refer to Table 2, "Process - Long-Term Negotiated Lease," on the following page.

15.06.04.02 **Letter of Understanding**

A Letter of Understanding (Letter) is sent to the proposed lessee after AAC consents to direct negotiations. The letter states the Department's intent to negotiate in good faith for the proposed lease. This will assist the proposed lessee in obtaining all local approvals and construction funding prior to executing the lease agreement, as the Department is agreeing to keep the site off the market pending successful negotiations.

The Letter requires a \$1,000 processing fee and states the AAC's consent to directly negotiate is valid for **one year**. The Letter will also request funds to pay for the district/region's appraisal of the airspace site, which must be received prior to the Appraisal Branch completing the report. The Letter should also outline the time frame for negotiations and satisfaction of any issues Airspace, FHWA, DARC, or AAC have identified.

If mutual agreement cannot be reached on the terms and conditions within one year, the AAC may grant an extension. If the proposed lessee wishes to continue negotiating, there is no additional processing fee. If negotiations will not continue beyond the first year due to AAC, lessee, or Airspace desiring to terminate discussions, Airspace must send written notice to the proposed lessee canceling the negotiations and any and all agreements stated in the Letter. No fees or funds are returned to the proposed lessee.

See Exhibit 15-EX-04.

15.06.05.00 **AAC and CTC Approval**

Before the Letter of Understanding, the AAC must consent to Airspace's recommendation that direct negotiations with a proposed lessee will result in a higher rate of return to the Department and that it is in the State's best interest to deal directly with one entity.

The negotiated terms and conditions, along with the appraisal summary, are presented to the AAC to recommend CTC approval.

After CTC approval of the terms and conditions, the R/W Program Manager or delegated representative can execute the standard lease agreement.

See Reference file for most current AAC guidelines.

15.06.05.01 **AAC Consent to Directly Negotiate**

The request for AAC to consent to direct negotiations must clearly state **why** it is in the State's best interest to lease directly to the proposed entity (e.g., plottage value, rate of return, and improvements to the site).

Each proposed lessee must pay a processing fee of \$1,000 if the AAC consents to direct negotiations.

AAC's consent to negotiate directly is only good for one year. Airspace must request an extension from the AAC to negotiate beyond that time. An additional processing fee is not required.

See Exhibit 15-EX-05.

15.06.05.02 **CTC Approval of Terms and Conditions**

The CTC must approve the negotiated terms and conditions before the lease agreement is executed. HQ A/S will submit a Request for Approval (Exhibit 15-EX-06) after Airspace presents the terms and conditions to the AAC (Exhibit 15-EX-7) and AAC recommends approval.

15.06.06.00 **Public Agency Leases**

Leases with public agencies do not require AAC consent to negotiate directly or CTC approval of the terms and conditions, as long as the lease rate is at or above FMLR. Prior to concluding negotiations, Airspace must advise HQ A/S of the proposed rate and the appraised value. The executed lease agreement must have the appraisal summary supporting the lease rate stating it is fair market.

NOTE: The site **must** be used for a "public" purpose.

TABLE 2 PROCESS - LONG-TERM NEGOTIATED LEASE		
Step	Responsible Party	Action
1-7	Various	See Steps for Long Term Bid Lease.
8	Airspace	Send "Consent to Directly Negotiate from the AAC" (see Exhibit 15-EX-05) to HQ A/S 30 days prior to the next quarterly AAC meeting.
9	HQ A/S	The request should explain why it is in the Department's best interest to negotiate directly with the proposed lessee, including any attempts or barriers to offering the site for competitive bid. For example: <ul style="list-style-type: none"> • Return to the State would be much higher. • Site is landlocked with a single user. • Plottage value could be expected.
10		The request should include a location map, site map, square footage of the usable and non-usable area, and the proposed use.
11		Submit the request to the AAC and arrange for Airspace to present the matter at the next quarterly meeting.
12	Airspace	If approved, Airspace may provide the proposed lessee with a Letter of Understanding (Exhibit 15-EX-04) detailing the anticipated lease agreement, with a copy to HQ A/S.
13		Request an appraisal report for the proposed use, either through the Appraisal Branch or from the proposed lessee. HQ must approve the appraisal report.
14		After lessee is advised of the FMLR, negotiate all other terms and conditions of the lease, including time frame, term, and extensions. <i>No term is independent of another, so Airspace should negotiate the best terms for the Department, with the understanding that a favorable position for the Department in one area may require a less favorable term elsewhere.</i>
15		Secure preliminary plans and submit for DARC approval.
16		Request "CTC Approval of Terms and Conditions" through the AAC by sending a memorandum to HQ A/S.
17	HQ A/S	Submit the request to the AAC and arrange for Airspace to present the matter at the next quarterly meeting.
18		If AAC recommends approval, request "CTC Approval of Terms and Conditions" at the next monthly meeting.
19	Airspace	If CTC approves terms and conditions, request lessee to execute the lease agreement and forward it to HQ A/S for execution (unless delegated). All final approvals must be obtained PRIOR to execution (see Final Approval).
20-26	Various	Same as Long Term Bid Leases Steps 13-19.

15.06.07.00 **Processing Other Lease Agreements**

Three-Year Directly Negotiated Non-Development Leases, leases with non-profit organizations on park and ride lots, and leases with the motion picture industry should follow a process similar to the directly negotiated lease agreement. Airspace should document the file as to why direct negotiations are in the State's best interest, the lease rate is based on market, and the standard lease agreement is being used.

It is important to note that "for profit" uses on a park and ride lot can be approved by following the normal lease process, and, although generally the lessee should be selected via a competitive bid, direct negotiations can be used if that method is in the best interest of the State.

Processing **Telecommunications Site License Agreements** is described in the Department's Telecommunications' Licensing Process and Siting Guidelines. See the flowcharts on the following two pages and R/W Form 15-5 (checklist) for a quick reference to processing the SLA.

If several carriers are interested in the same site for a wireless facility, then Airspace must offer the site through competitive bidding, using the pricing matrix in the MLA as the basis for the minimum bid. However, if the carriers can agree on a colocation (multiple carriers at the same site) or select other sites that are more feasible for their facility, Airspace can initiate the process to execute the SLA.

15.06.08.00 **Marler Johnson Park Lease**

Airspace shall specifically notify all appropriate local agencies of the availability of airspace for park and recreational uses that meet CTC criteria. Local agencies should be contacted about leasing potential sites.

Lease agreements under this statute shall be made on the standard lease format for the Marler Johnson Highway Park Act. Airspace shall ensure that development is made in accordance with approved plans and within the time limits set forth in the lease.

Local agencies should contact Airspace about leasing a site within non-operating rights of way (GC Section 14013). Airspace shall review the

local agency's request and, if the site will not generate a higher return if leased for some other use, initiate the process to lease the site to the local agency.

After determining that a Marler Johnson park or recreational use is appropriate, the Department may offer a lease for a period of ten years with five year extensions at the Senior's discretion. FMLR is required, but the rate may be offset up to the amount the Department will save in landscaping and maintenance expenses. Special provisions to terminate the lease are included in the standard lease agreement. AAC and CTC approval is not required if the lease meets all other park lease requirements.

15.06.09.00 **Toll Bridge Authority Lease**

Special handling is required for revenue received from airspace sites created by construction of bridges under authority of the Toll Bridge Authority Act and from concession leases in Terminal Facilities. Because these facilities were financed by the Toll Bridge Authority Act and bond indentures were executed under such Act, the Department's accounting procedures provide for handling and distribution of funds through District 04. Although the revenue is treated differently, all sites identified as airspace on the toll bridges shall be controlled by the same procedures established for any airspace site, including processes and approvals.

Property Management manages terminal facility leases under the same procedures as regular accounts are managed.

15.06.10.00 **Subsequent Lease Documents**

After a lease has been executed, the lessee may need additional formal consent from Airspace to construct or modify operations on the site.

The lessee should be charged a processing fee to obtain approval of most subsequent documents, primarily subleases, assignments, and encumbrances. The processing fee is based on time involved in the review and provisions in the lease agreement to charge fees. When Airspace has the latitude to determine the rate, a standard \$1,000 fee per action can be applied in most circumstances.

15.06.10.01 **Estoppel Certificate**

Lenders and potential assignees may want assurances that the lessee is not in default prior to executing any agreements with the lessee. The lessee's financial institution may request Airspace provide the lease status prior to approving the lessee's construction loan. The Estoppel Certificate states there is a valid lease agreement, the lessee is in full compliance with the terms and conditions, and the lease payments are current.

See Exhibit 15-EX-8 for the **mandatory** format.

15.06.10.02 **Encumbrance**

The lessee may need to encumber the airspace site in order to secure a loan. Standard lease agreements may allow encumbrance with Airspace approval before the loan is secured. If granted, Airspace should ensure the financial institution will be responsible for all lease payments in the event lessee defaults on the airspace lease.

The lease agreement should be reviewed carefully regarding any special language or provisions for encumbering.

See Exhibit 15-EX-9.

15.06.10.03 **Memorandum of Lease**

When a lessee applies for a loan, the lending institution may require a Memorandum of Lease (MOL) signed by Airspace. If the MOL will be recorded, a district/region representative authorized to execute real estate documents for that geographical area must sign it.

Prior to executing the MOL, Airspace must recommend its execution, stating the lessee is not in default with any provisions of the lease agreement.

See Exhibit 15-EX-10.

15.06.10.04 **Sublease and Assignment**

Airspace must approve lessee's request to assign or sublease any or all interests in an Airspace lease. Each lease agreement provides for the notice and approval process, along with a fee and a sharing of any increase in the lease rate generated by the transfer.

Airspace will execute the Assignment of Lease (Forms RW 15-6 or RW 15-7) or Consent to Sublease (Form RW 15-8) after review of the:

- Lease agreement with the lessee.
- Proposed assignment or sublease between the parties.
- Statement detailing assignee's or sublessee's proposed use.
- Proposed assignee's or sublessee's financial statement (unless it is a bank or financial institution).
- Current lessee's status as a tenant.

In rare circumstances, Airspace may relieve the primary lessee of the responsibilities in the lease agreement should the assignee or sublessee default. In some cases, the primary lessee's bank or financial institution may become the new lessee due to defaults between the two parties.

FHWA concurrence with subleases or assignments is required only if there is a change in use or if the current use affects air quality.

15.06.10.05 **Amendments**

If an amendment to an executed lease is considered a **major** change, prior approval from AAC, CTC, and FHWA may be required. Airspace shall submit the request to HQ A/S for processing. Any change that affects the following is considered major:

- Term of lease (primary or option).
- Reduced rental rate or the return to the State for the remaining term.
- Use including the type and square footage of the development.
- Lease adjustments and reevaluations (e.g., frequency or rate).

Airspace must explain the effect of the amendment, justifying their recommendation of it. Any standard lease provisions that were not part of the existing agreement should also be included at this time.

15.06.11.00 **Reviews and Approvals**

Airspace must ensure that each airspace site is thoroughly reviewed and appropriately approved to reduce potential risks to the Department. All affected programs and those entities with authority over the process should review each use.

The Reference File provides current information on mandatory review and approval processes for the different leases and when Airspace has discretion or delegated authority to review and approve the use.

15.06.11.01 **Conceptual Approval**

Either Airspace or a proposed lessee may want to have an airspace site approved for a conceptual use. DARC must recommend the proposed use to FHWA through HQ A/S. Based on information provided by Airspace, FHWA approves the general concept of the proposal only and is in no way bound to accept the final proposal. FHWA does not need to conceptually approve the use if the same use was approved when entered into the inventory.

15.06.11.02 **Preliminary Approval**

Preliminary approval is only needed when the information at conceptual approval was insufficient to determine the major impacts on the property or when the proposed use differs. A site may have conceptual approval as unimproved parking, but at the preliminary phase the lessee wants to pave, light, and stripe (with some excavation). The DARC should review the proposal again to determine the effects on operations (e.g., drainage, column protection, ingress, and egress). Restrictions and conditions are provided to the proposed lessee so all requirements are identified on the final plans. FHWA preliminary approval is also required.

15.06.11.03 **Final Approval**

Before the lease agreement is executed, the proposed use must receive final approval. Generally, formal approval for a lease over five years includes:

- DARC approval of the final construction plans of the proposal.
- Local agency concurrence that the proposal does not conflict with local zoning ordinances (as evidenced by issuing a building permit).
- Recommendation of lessee's environmental document by District Environmental.

- FHWA approval of the final construction plans, environmental document, and, if necessary, an air quality study.
- Evidence of insurance per the lease agreement.
- Execution of the lease agreement and payment of the lease rate per terms of the agreement.
- Application and issuance of an encroachment permit to construct from District Permits Office.

Sites offered for competitive bid must have conceptual approval for the proposed use. The bid package must state that final approval in accordance with these procedures must be obtained before the site is occupied.

Airspace sites for short-term unimproved parking and open storage, with no change in the approved use or improvements, may need less formal review for final approval.

See Reference File for the most current review and approval authority by phase and by office/program.

15.06.12.00 **Environmental Status**

Every site must have an approved document for the proposed use that addresses environmental issues. Proposed lessee must obtain final approval of their plan from the local agency, which usually requires an environmental study. The study must be submitted to District Environmental for review and recommendation for approval to FHWA. The recommendation states the document meets applicable CEQA and NEPA requirements. A new lease for the same use will require an approved environmental document within the last 3 years.

Airspace should consult the Environmental Manual or the District Environmental Unit on specific questions.

15.06.13.00 FHWA Approval

FHWA approval of airspace leases is required when the airspace site is located on a highway included in the National Highway System (NHS), or when the highway project received any federal funds for design, construction, or maintenance. All federal requirements in 23 CFR 713, .204, Subpart B, shall be followed. (See Exhibit 15-EX-13.)

If the proposal is considered a major environmental action, FHWA will require an appropriate Environmental Impact Statement (EIS) or Environmental Assessment (EA) in accordance with 23 CFR 771.

FHWA's final approval is required before the encroachment permit for construction can be issued. Airspace must submit, through HQ A/S, the final DARC comments, the environmental document, an air quality statement or study, the proposed use and terms, and the final construction plans.

All issues DARC and FHWA raise at the conceptual phase must be addressed in the final package.

See table below.

15.06.14.00 Air Quality

An air quality study or statement is required for all Airspace sites when the use will involve vehicle traffic, especially short-term parking. The study or statement will consider the impact of the frequency of hot and cold starts of the vehicles.

The determination of whether an air quality statement or study is needed depends on the site's status. If the site has never been leased, an Air Quality Assessment from the local Air Quality Regional Board or the local Association of Governments (e.g., SCAG) is required. This assessment must address the impacts of the proposed use on air quality based on each Region's Air Quality Assessment Model.

If the proposed use is the same as the previous use, a statement from the local Metropolitan Transportation Commission (MTC) is needed. The statement should address the fact that the Airspace lease is not regionally significant and is not a transportation project. A blanket approval for all future Airspace leases (new and renewals) for a specified use only (e.g., parking lots with less than 250 parking spaces) may be obtained from the local MTC.

FHWA APPROVAL REQUIRED FOR	
•	Conceptual use of an airspace site not in the current inventory. (Requires a narrative describing the use and a location map.)
•	A change in use (whether new lease, assignment, amendment, etc.).
•	Preliminary and final approval of the proposed use, including site plans, on any airspace site within the right of way (Includes telecom sites). Note 1: Preliminary approval <u>not</u> required if only minor improvements (paving, striping, lighting) will be made. Note 2: Final approval of an airspace or telecom site requires detailed mapping and plans of all impacts to the land (location of buildings, excavation, trenching, utilities). Note 3: DARC notes must be submitted with any request for conceptual, preliminary, or final approval.
•	Categorical Exemption or Environmental Impact Document of any new lease or a new lessee if the previous Categorical Exemption is over five years.
•	Air Quality Statement.

FHWA must approve the air quality study or statement prior to execution of the lease agreement.

The air quality requirement applies to all new leases, any lease with a change in use, or a renewal of a lease if it is a different lessee. All other leases are currently exempt from the process.

15.06.15.00 **Transmitting Documents**

HQ A/S involvement in the lease process varies depending on the level of review and approval for

the different lease agreements and the degree of delegations to Airspace. To ensure the appropriate level of review and involvement by HQ A/S occurs on a timely basis, Airspace should use a transmittal checklist in routing documents for processing.

Use Form RW 15-9 to transmit documents to HQ A/S. (See Reference File for information on the most current review and approval authority and delegations.)